

REVISED
BCP APPLICATION
6.2.04

June 1, 2004

BY FEDERAL EXPRESS

Robert Marino
Chief, Site Control Section
New York State Department of
Environmental Conservation
625 Broadway
Albany, New York 12233-7010

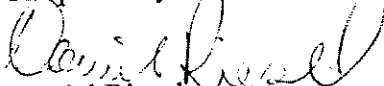
Re: Kips Bay Fuel Terminal (the "Site")
616 First Avenue
New York, New York
VCO Number D2-0001-01-03
Site Number V-00430-2

Dear Mr. Marino:

We have enclosed originals and two copies of the revised Brownfield Cleanup Program ("BCP") applications for the above-referenced Kips Bay Fuel Terminal Site of Volunteer TRC Companies, Inc., the Remediation Contractor and respondent under Voluntary Cleanup Order Index Number D2-0001-01-03, East River Realty Company, LLC, corporate successor to FSM East River Associates LLC, a respondent under the above-referenced Voluntary Cleanup Order, and the Consolidated Edison Company of New York, Inc., the owner of the Site which is the subject of Voluntary Cleanup Order D2-0001-01-03. This application, together with the one for the Greater Waterside Site being submitted under letter of this same date, supersedes our application submitted with our letter dated March 29, 2004.

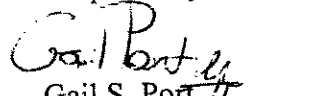
Applicants respectfully request that the Kips Bay Fuel Terminal Site, currently in the Voluntary Cleanup Program, be accepted into the Brownfield Cleanup Program.

Respectfully submitted,


Daniel Riesel
Sive, Paget & Riesel, P.C.
460 Park Avenue
New York, NY 10022
(212) 421-2150
driesel@sprlaw.com

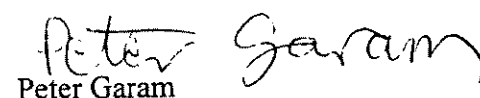
Attorney for East River
Realty Company, LLC

Respectfully submitted,


Gail S. Port
Proskauer Rose LLP
1585 Broadway
New York, NY 10036
(212) 969-3243
gport@proskauer.com

Attorney for TRC
Companies, Inc.

Respectfully submitted,


Peter Garam
4 Irving Place, Room 1815-S
New York, NY 10003
(212) 460-2985
garamp@coned.com

Attorney for Consolidated
Edison Company of
New York, Inc.

Enclosures

cc: Denise J. D'Ambrosio, Assistant Counsel
New York State Department of Environmental Conservation

Eastern Field Unit
200 White Plains Road, 5th Floor
Tarrytown, NY 10591-5805

Anthony Quartararo, Assistant Counsel (w/o encls.)
Division of Environmental Enforcement
New York State Department of Environmental Conservation
625 Broadway, 14th Floor
Albany, NY 12233-5500

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION
 ECL ARTICLE 27 / TITLE 14

10/9/03

Applicant Information

NAME East River Realty Company, LLC

ADDRESS 9 West 57th Street, Suite 1610

CITY/TOWN New York, New York

ZIP CODE 10019

PHONE (212) 308-3800

FAX (212) 308-3877

E-MAIL

NAME OF APPLICANT'S REPRESENTATIVE Daniel Riesel, Esq.

ADDRESS 460 Park Avenue, 10th Floor

CITY/TOWN New York, New York

ZIP CODE 10022

PHONE (212) 421-2150

FAX (212) 906-9032

E-MAIL driesel@sprlaw.com

THE APPLICANT MUST CERTIFY THAT IT IS EITHER A PARTICIPANT OR VOLUNTEER IN ACCORDANCE WITH ECL § 27-1405 (1) BY CHECKING ONE OF THE BOXES BELOW:

☐ PARTICIPANT

An applicant who either 1) was the owner of the site at the time of the disposal of hazardous waste or discharge of petroleum or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.

☒ VOLUNTEER

An applicant other than a participant, including an applicant whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.

NOTE: By checking this box, the applicant certifies that he/she has exercised appropriate care with respect to the hazardous waste found at the facility by taking reasonable steps to: i) stop any continuing discharge; ii) prevent any threatened future release; and iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous waste.

Applicant Relationship to Property (check one):

☐ Previous Owner☐ Current Owner☒ Potential /Future Purchaser☐ Other _____**Current Owner/Operator Information**

OWNER'S NAME (if different from applicant) Consolidated Edison Company of New York, Inc.

ADDRESS 4 Irving Place

CITY/TOWN New York, New York

ZIP CODE 10003

PHONE (212) 460-4600

FAX (212) 260-5713

E-MAIL stelbenr@coned.com

OPERATOR'S NAME (if different from applicant) Remediation Contractor under the VCO: TRC Companies, Inc.

ADDRESS 1200 Wall Street West, 2nd Floor

CITY/TOWN Lyndhurst, New Jersey

ZIP CODE 07071

PHONE (201) 933-5541

FAX (201) 933-5601

E-MAIL emalley@trcsolutions.com

Site Information

SITE NAME Kips Bay Fuel Terminal
 SITE ADDRESS 616 First Avenue CITY/TOWN New York ZIP CODE 10016
 COUNTY New York
 LATITUDE (SEE ATTACHMENT A) SITE SIZE (ACRES) (SEE ATTACHMENT D)
 LONGITUDE (SEE ATTACHMENT A)

PLEASE ATTACH A COUNTY TAX MAP WITH IDENTIFIER NUMBERS, ALONG WITH ANY FIGURES NEEDED TO SHOW THE LOCATION AND BOUNDARIES OF THE SITE. ALSO INCLUDE A USGS 7.5 MINUTE QUAD MAP IN WHICH THE SITE IS LOCATED.

1. DO THE SITE BOUNDARIES CORRESPOND TO TAX MAP METES AND BOUNDS? (SEE ATTACHMENTS C-F) ☐ YES ☒ NO
 IF NO, PLEASE ATTACH A METES AND BOUNDS DESCRIPTION OF THE SITE.
2. IS THE SITE PART OF A DESIGNATED BROWNFIELD OPPORTUNITY AREA PURSUANT TO GML970-R? IF YES, IDENTIFY AREA (NAME) ☐ YES ☒ NO
3. IS THE SITE PART OF A DESIGNATED EN-Zone PURSUANT TO TL § 21(b)(6). IF YES, IDENTIFY AREA (NAME) ☐ YES ☒ NO

Applicant Eligibility Information (Please refer to ECL § 27-1407)

1. ARE ANY ENFORCEMENT ACTIONS PENDING AGAINST THE APPLICANT REGARDING THIS SITE? ☐ YES ☒ NO
2. IS THE APPLICANT SUBJECT TO AN OUTSTANDING CLAIM BY THE SPILL FUND FOR THIS SITE? ☐ YES ☒ NO
3. HAS THE APPLICANT VIOLATED ANY PROVISION OF ECL ARTICLE 27? ☐ YES ☒ NO
4. HAS THE APPLICANT BEEN PREVIOUSLY DENIED ENTRY TO THE BCP? ☐ YES ☒ NO
5. HAS THE APPLICANT COMMITTED A NEGLIGENT OR INTENTIONALLY TORTIOUS ACT REGARDING HAZARDOUS WASTE OR PETROLEUM? ☐ YES ☒ NO
6. HAS THE APPLICANT BEEN CONVICTED OF A CRIMINAL OFFENSE THAT INVOLVES A VIOLENT FELONY, FRAUD, BRIBERY, PERJURY, THEFT, OR OFFENSE AGAINST PUBLIC ADMINISTRATION? ☐ YES ☒ NO
7. HAS THE APPLICANT KNOWINGLY FALSIFIED STATEMENTS OR CONCEALED MATERIAL FACTS IN A MATTER RELATED TO THE DEPARTMENT? ☐ YES ☒ NO
8. HAS THE APPLICANT, BASED ON THE PROVISIONS OF ECL ARTICLE 27-1407 (OR A SIMILAR PROVISION OF FEDERAL OR STATE LAW), COMMITTED AN ACT OR FAILED TO ACT, AND SUCH ACT OR FAILURE TO ACT COULD BE THE BASIS FOR DENIAL OF A BCP APPLICATION? ☐ YES ☒ NO

Site Eligibility Information (Please refer to ECL § 27-1405)

1. DOES THE SITE MEET THE DEFINITION OF A BROWNFIELD SITE (REAL PROPERTY, THE REDEVELOPMENT OR REUSE OF WHICH MAY BE COMPLICATED BY THE PRESENCE OR POTENTIAL PRESENCE OF A HAZARDOUS WASTE, PETROLEUM, POLLUTANT, OR CONTAMINANT)? ☒ YES ☐ NO
2. IS THE SITE LISTED ON THE NATIONAL PRIORITIES LIST? ☐ YES ☒ NO
3. IS THE SITE LISTED ON THE NYS REGISTRY OF INACTIVE HAZARDOUS WASTE DISPOSAL SITES? IF YES, PLEASE PROVIDE: SITE # _____ CLASS # _____ ☐ YES ☒ NO
4. IS THE SITE SUBJECT TO A PERMIT UNDER ECL ARTICLE 27, TITLE 9, OTHER THAN AN INTERIM STATUS FACILITY? ☐ YES ☒ NO
5. IS THE SITE SUBJECT TO A CLEANUP ORDER UNDER NAVIGATION LAW ARTICLE 12 OR ECL ARTICLE 17 TITLE 10? ☐ YES ☒ NO
6. IS THE SITE SUBJECT TO A STATE OR FEDERAL ENFORCEMENT ACTION RELATED TO HAZARDOUS WASTE OR PETROLEUM? ☐ YES ☒ NO

Project Description

PLEASE ATTACH A DESCRIPTION OF THE PROJECT WHICH INCLUDES THE FOLLOWING COMPONENTS: (SEE ATTACHMENT B)

- PURPOSE AND SCOPE OF THE PROJECT
- ESTIMATED PROJECT SCHEDULE

Site's Environmental History

TO THE EXTENT THAT EXISTING INFORMATION/STUDIES/REPORTS ARE AVAILABLE TO THE APPLICANT, PLEASE ATTACH THE FOLLOWING:

1. **ENVIRONMENTAL DATA** (SEE ATTACHMENTS G AND H)
A PHASE I ENVIRONMENTAL SITE ASSESSMENT REPORT PREPARED IN ACCORDANCE WITH ASTM E 1527 (American Society for Testing and Materials: Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process), AND ALL ENVIRONMENTAL REPORTS RELATED TO CONTAMINANTS ON OR EMANATING FROM THE SITE.
IF A FINAL INVESTIGATION REPORT IS INCLUDED, INDICATE WHETHER IT MEETS THE REQUIREMENTS OF ECL ARTICLE 27-1415(2):

☒ YES ☐ NO

2. **OWNERS** (SEE ATTACHMENT H)
A LIST OF PREVIOUS OWNERS WITH NAMES, LAST KNOWN ADDRESSES AND TELEPHONE NUMBERS (DESCRIBE APPLICANT'S RELATIONSHIP, IF ANY, TO EACH PREVIOUS OWNER LISTED. IF NO RELATIONSHIP, PUT "NONE").
3. **OPERATORS** (SEE ATTACHMENT H)
A LIST OF PREVIOUS OPERATORS WITH NAMES, LAST KNOWN ADDRESSES AND TELEPHONE NUMBER (DESCRIBE APPLICANT'S RELATIONSHIP, IF ANY, TO EACH PREVIOUS OPERATOR LISTED. IF NO RELATIONSHIP, PUT "NONE").

Contact List Information (SEE ATTACHMENT I)

PLEASE ATTACH, AT A MINIMUM, THE NAMES AND ADDRESSES OF THE FOLLOWING:

1. THE CHIEF EXECUTIVE OFFICER AND ZONING BOARD CHAIRPERSON OF EACH COUNTY, CITY, TOWN AND VILLAGE IN WHICH THE SITE IS LOCATED.
2. RESIDENTS, OWNERS, AND OCCUPANTS OF THE SITE AND PROPERTIES ADJACENT TO THE SITE.
3. LOCAL NEWS MEDIA FROM WHICH THE COMMUNITY TYPICALLY OBTAINS INFORMATION.
4. THE PUBLIC WATER SUPPLIER WHICH SERVICES THE AREA IN WHICH THE SITE IS LOCATED.
5. ANY PERSON WHO HAS REQUESTED TO BE PLACED ON THE SITE CONTACT LIST.
6. THE ADMINISTRATOR OF ANY SCHOOL OR DAY CARE FACILITY LOCATED ON OR NEAR THE SITE.
7. THE LOCATION OF A DOCUMENT REPOSITORY FOR THE PROJECT (E.G., LOCAL LIBRARY)

Contaminant Information (SEE ATTACHMENT J)

INDICATE KNOWN OR SUSPECTED CONTAMINANTS AND THE MEDIA WHICH ARE KNOWN OR SUSPECTED TO HAVE BEEN AFFECTED:

Contaminant Category	Soil	Groundwater	Surface Water	Sediment	Soil Gas
Petroleum					
Chlorinated Solvents					
Other VOCs					
SVOCs					
Metals					
Pesticides					
PCBs					
Other*					

*Please describe: _____

Land Use Factors (Please refer to ECL § 27-1415(3))

Current Use: ☐ Residential ☐ Commercial ☒ Industrial ☐ Other

Future Use: ☒ Residential ☒ Commercial ☐ Industrial ☐ Other

Please check the appropriate boxes and provide an explanation as an attachment if appropriate.

	Yes	No	Unknown
1. Do current historical and/or recent development patterns support the proposed use?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Is the proposed use consistent with applicable zoning laws/maps? (See Note 1)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	Yes	No	Unknown
3. Is the proposed use consistent with applicable brownfield opportunity area designations? (See GML 970-r)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Is the proposed use consistent with applicable comprehensive community master plans, local waterfront revitalization plans, other adopted land use plans?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Are there any Environmental Justice Concerns? (See §27-1415(3)(p)). (See Note 2)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Are there any federal or State land use designations relating to this site?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Do the population growth patterns and projections support the proposed use?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Is the site accessible to existing infrastructure?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9. Are there important cultural resources, including federal or state historic or heritage sites or Native American religious sites proximate to the site?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Are there important federal, state or local natural resources, including waterways, wildlife refuges, wetlands, or critical habitats of endangered or threatened species proximate to the site? (See Note 3)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Are there floodplains proximate to the site? (See Note 4)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. Are there any institutional controls currently applicable to the site?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
13. Describe on attachment the proximity to real property currently used for residential use, and to urban, commercial, industrial, agricultural, and recreational areas. (SEE ATTACHMENT K)			
14. Describe on attachment the potential vulnerability of groundwater to contamination that might migrate from the site, including proximity to wellhead protection and groundwater recharge areas. (SEE ATTACHMENT L)			
15. Describe on attachment the geography and geology of the site. (SEE ATTACHMENT M)			
(Note: the 16 th criteria relates to comments from the public, which would not be received at the time of application)			

Statement of Certification

(By applicant who is an individual)

I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law.

Date: _____ Signature: _____ Print Name: _____

(By an applicant other than an individual) (SEE ATTACHED STATEMENT OF CERTIFICATION)

I certify that I am _____ (title) of _____ (entity); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.

Date: _____ Signature: _____ Print Name: _____

SUBMITTAL INFORMATION:

Four (4) complete copies, one with original signatures, are required.

- Three (3) of the copies, one with original signatures, must be sent to:
Chief, Site Control Section
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, NY 12233-7020

- One (1) copy must be sent to the DEC regional contact in the regional office covering the county in which the site is located.
Please check our website for the address of our regional offices: <http://www.dec.state.ny.us/website/der/index.html>

FOR DEPARTMENT USE ONLY

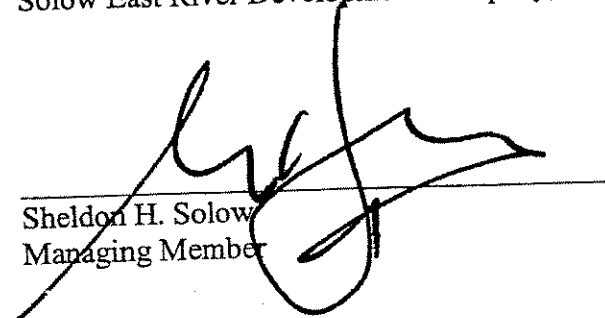
BCP SITE NO: _____ BCP SITE T&A CODE: _____ PROJECT MANAGER: _____

STATEMENT OF CERTIFICATION

EAST RIVER REALTY COMPANY, LLC

By: Solow East River Development Company, LLC, Managing Member

By:


Sheldon H. Solow
Managing Member

Date:

May 28, 2004

Brownfield Cleanup Program (BCP) Application

Notes

Note 1: Certain potential uses of the property are consistent with applicable zoning requirements. Furthermore, the Agreement of Sale between Con Edison and the Developer, East River Realty Company, LLC, requires the Developer to seek zoning changes to achieve an FAR of 12, which are consistent with land use patterns in the area.

Note 2: Applicant does not believe that the project will result in a disproportionate adverse environmental impact on the community. For a full discussion of the potential environmental impacts of the project, please see the recently completed Final Generic Environmental Impact Statement (ENB February 04, 2004).

Note 3: The East River is proximate to the Site.

Note 4: The Kips Bay Fuel Terminal Site is within a floodplain.

TRC Companies, Inc.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION
 ECL ARTICLE 27 / TITLE 14

10/9/03

Applicant Information

NAME TRC Companies, Inc.

ADDRESS 1200 Wall Street West, 2nd Floor

CITY/TOWN Lyndhurst, NJ

ZIP CODE 07071

PHONE (201) 933-5541

FAX (201) 933-5601

E-MAIL emalley@trcsolutions.com

NAME OF APPLICANT'S REPRESENTATIVE Edward J. Malley

ADDRESS 1200 Wall Street West, 2nd Floor

CITY/TOWN Lyndhurst, NJ

ZIP CODE 07071

PHONE (201) 933-5541

FAX (201) 933-5601

E-MAIL emalley@trcsolutions.com

THE APPLICANT MUST CERTIFY THAT IT IS EITHER A PARTICIPANT OR VOLUNTEER IN ACCORDANCE WITH ECL § 27-1405 (1) BY CHECKING ONE OF THE BOXES BELOW:

☐ PARTICIPANT

An applicant who either 1) was the owner of the site at the time of the disposal of hazardous waste or discharge of petroleum or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.

☒ VOLUNTEER

An applicant other than a participant, including an applicant whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.

NOTE: By checking this box, the applicant certifies that he/she has exercised appropriate care with respect to the hazardous waste found at the facility by taking reasonable steps to: i) stop any continuing discharge; ii) prevent any threatened future release; and iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous waste.

Applicant Relationship to Property (check one):

☐ Previous Owner☐ Current Owner☐ Potential /Future Purchaser☒ Other Remediation Contractor under VCO**Current Owner/Operator Information**

OWNER'S NAME (if different from applicant) Consolidated Edison Company of New York, Inc.

ADDRESS 4 Irving Place

CITY/TOWN New York, New York

ZIP CODE 10003

PHONE (212) 460-4600

FAX (212) 260-5713

E-MAIL stelbenr@coned.com

OPERATOR'S NAME (if different from applicant) Remediation Contractor under the VCO: TRC Companies, Inc.

ADDRESS Same as applicant

CITY/TOWN Same as applicant

ZIP CODE Same as applicant

PHONE Same as applicant

FAX Same as applicant

E-MAIL Same as applicant

Site Information

SITE NAME Kips Bay Fuel Terminal

SITE ADDRESS 616 First Avenue

CITY/TOWN New York

ZIP CODE 10016

COUNTY New York

SITE SIZE (ACRES) (SEE ATTACHMENT D)

LATITUDE (SEE ATTACHMENT A)

LONGITUDE (SEE ATTACHMENT A)

PLEASE ATTACH A COUNTY TAX MAP WITH IDENTIFIER NUMBERS, ALONG WITH ANY FIGURES NEEDED TO SHOW THE LOCATION AND BOUNDARIES OF THE SITE. ALSO INCLUDE A USGS 7.5 MINUTE QUAD MAP IN WHICH THE SITE IS LOCATED.

1. DO THE SITE BOUNDARIES CORRESPOND TO TAX MAP METES AND BOUNDS? (SEE ATTACHMENTS C-F)
IF NO, PLEASE ATTACH A METES AND BOUNDS DESCRIPTION OF THE SITE.

☐ YES ☒ NO

2. IS THE SITE PART OF A DESIGNATED BROWNFIELD OPPORTUNITY AREA PURSUANT TO GML970-R? IF YES, IDENTIFY AREA (NAME) _____

☐ YES ☒ NO

3. IS THE SITE PART OF A DESIGNATED EN-Zone PURSUANT TO TL § 21(b)(6).
IF YES, IDENTIFY AREA (NAME) _____

☐ YES ☒ NO**Applicant Eligibility Information (Please refer to ECL § 27-1407)**

1. ARE ANY ENFORCEMENT ACTIONS PENDING AGAINST THE APPLICANT REGARDING THIS SITE?

☐ YES ☒ NO

2. IS THE APPLICANT SUBJECT TO AN OUTSTANDING CLAIM BY THE SPILL FUND FOR THIS SITE?

☐ YES ☒ NO

3. HAS THE APPLICANT VIOLATED ANY PROVISION OF ECL ARTICLE 27?

☐ YES ☒ NO

4. HAS THE APPLICANT BEEN PREVIOUSLY DENIED ENTRY TO THE BCP?

☐ YES ☒ NO

5. HAS THE APPLICANT COMMITTED A NEGLIGENT OR INTENTIONALLY TORTIOUS ACT REGARDING HAZARDOUS WASTE OR PETROLEUM?

☐ YES ☒ NO

6. HAS THE APPLICANT BEEN CONVICTED OF A CRIMINAL OFFENSE THAT INVOLVES A VIOLENT FELONY, FRAUD,

☐ YES ☒ NO

BRIBERY, PERJURY, THEFT, OR OFFENSE AGAINST PUBLIC ADMINISTRATION?

☐ YES ☒ NO

7. HAS THE APPLICANT KNOWINGLY FALSIFIED STATEMENTS OR CONCEALED MATERIAL FACTS IN A MATTER RELATED TO THE DEPARTMENT?

☐ YES ☒ NO

8. HAS THE APPLICANT, BASED ON THE PROVISIONS OF ECL ARTICLE 27-1407 (OR A SIMILAR PROVISION OF FEDERAL OR STATE LAW), COMMITTED AN ACT OR FAILED TO ACT, AND SUCH ACT OR FAILURE TO ACT COULD BE THE BASIS FOR DENIAL OF A BCP APPLICATION?

☐ YES ☒ NO**Site Eligibility Information (Please refer to ECL § 27-1405)**

1. DOES THE SITE MEET THE DEFINITION OF A BROWNFIELD SITE (REAL PROPERTY, THE REDEVELOPMENT OR REUSE OF WHICH MAY BE COMPLICATED BY THE PRESENCE OR POTENTIAL PRESENCE OF A HAZARDOUS WASTE, PETROLEUM, POLLUTANT, OR CONTAMINANT)?

☒ YES ☐ NO

2. IS THE SITE LISTED ON THE NATIONAL PRIORITIES LIST?

☐ YES ☒ NO

3. IS THE SITE LISTED ON THE NYS REGISTRY OF INACTIVE HAZARDOUS WASTE DISPOSAL SITES?
IF YES, PLEASE PROVIDE: SITE # _____ CLASS # _____

☐ YES ☒ NO

4. IS THE SITE SUBJECT TO A PERMIT UNDER ECL ARTICLE 27, TITLE 9, OTHER THAN AN INTERIM STATUS FACILITY?

☐ YES ☒ NO

5. IS THE SITE SUBJECT TO A CLEANUP ORDER UNDER NAVIGATION LAW ARTICLE 12 OR ECL ARTICLE 17 TITLE 10?

☐ YES ☒ NO

6. IS THE SITE SUBJECT TO A STATE OR FEDERAL ENFORCEMENT ACTION RELATED TO HAZARDOUS WASTE OR PETROLEUM?

☐ YES ☒ NO**Project Description**

PLEASE ATTACH A DESCRIPTION OF THE PROJECT WHICH INCLUDES THE FOLLOWING COMPONENTS: (SEE ATTACHMENT B)

- PURPOSE AND SCOPE OF THE PROJECT
- ESTIMATED PROJECT SCHEDULE

Site's Environmental History

TO THE EXTENT THAT EXISTING INFORMATION/STUDIES/REPORTS ARE AVAILABLE TO THE APPLICANT, PLEASE ATTACH THE FOLLOWING:

1. **ENVIRONMENTAL DATA** (SEE ATTACHMENTS G AND H)
A PHASE I ENVIRONMENTAL SITE ASSESSMENT REPORT PREPARED IN ACCORDANCE WITH ASTM E 1527 (American Society for Testing and Materials: Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process), AND ALL ENVIRONMENTAL REPORTS RELATED TO CONTAMINANTS ON OR EMANATING FROM THE SITE.
IF A FINAL INVESTIGATION REPORT IS INCLUDED, INDICATE WHETHER IT MEETS THE REQUIREMENTS OF ECL ARTICLE 27-1415(2):
☒ YES ☐ NO
2. **OWNERS** (SEE ATTACHMENT H)
A LIST OF PREVIOUS OWNERS WITH NAMES, LAST KNOWN ADDRESSES AND TELEPHONE NUMBERS (DESCRIBE APPLICANT'S RELATIONSHIP, IF ANY, TO EACH PREVIOUS OWNER LISTED. IF NO RELATIONSHIP, PUT "NONE").
3. **OPERATORS** (SEE ATTACHMENT H)
A LIST OF PREVIOUS OPERATORS WITH NAMES, LAST KNOWN ADDRESSES AND TELEPHONE NUMBER (DESCRIBE APPLICANT'S RELATIONSHIP, IF ANY, TO EACH PREVIOUS OPERATOR LISTED. IF NO RELATIONSHIP, PUT "NONE").

Contact List Information (SEE ATTACHMENT D)

PLEASE ATTACH, AT A MINIMUM, THE NAMES AND ADDRESSES OF THE FOLLOWING:

1. THE CHIEF EXECUTIVE OFFICER AND ZONING BOARD CHAIRPERSON OF EACH COUNTY, CITY, TOWN AND VILLAGE IN WHICH THE SITE IS LOCATED.
2. RESIDENTS, OWNERS, AND OCCUPANTS OF THE SITE AND PROPERTIES ADJACENT TO THE SITE.
3. LOCAL NEWS MEDIA FROM WHICH THE COMMUNITY TYPICALLY OBTAINS INFORMATION.
4. THE PUBLIC WATER SUPPLIER WHICH SERVICES THE AREA IN WHICH THE SITE IS LOCATED.
5. ANY PERSON WHO HAS REQUESTED TO BE PLACED ON THE SITE CONTACT LIST.
6. THE ADMINISTRATOR OF ANY SCHOOL OR DAY CARE FACILITY LOCATED ON OR NEAR THE SITE.
7. THE LOCATION OF A DOCUMENT REPOSITORY FOR THE PROJECT (E.G., LOCAL LIBRARY)

Contaminant Information (SEE ATTACHMENT J)

INDICATE KNOWN OR SUSPECTED CONTAMINANTS AND THE MEDIA WHICH ARE KNOWN OR SUSPECTED TO HAVE BEEN AFFECTED:

Contaminant Category	Soil	Groundwater	Surface Water	Sediment	Soil Gas
Petroleum					
Chlorinated Solvents					
Other VOCs					
SVOCs					
Metals					
Pesticides					
PCBs					
Other*					

*Please describe:

Land Use Factors (Please refer to ECL § 27-1415(3))

Current Use: ☐ Residential ☐ Commercial ☒ Industrial ☐ Other

Future Use: ☒ Residential ☒ Commercial ☐ Industrial ☐ Other

Please check the appropriate boxes and provide an explanation as an attachment if appropriate.

	Yes	No	Unknown
1. Do current historical and/or recent development patterns support the proposed use?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Is the proposed use consistent with applicable zoning laws/maps? (See Note 1)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	Yes	No	Unknown
3. Is the proposed use consistent with applicable brownfield opportunity area designations? (See GML 970-r)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Is the proposed use consistent with applicable comprehensive community master plans, local waterfront revitalization plans, other adopted land use plans?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Are there any Environmental Justice Concerns? (See §27-1415(3)(p)). (See Note 2)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Are there any federal or State land use designations relating to this site?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Do the population growth patterns and projections support the proposed use?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Is the site accessible to existing infrastructure?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9. Are there important cultural resources, including federal or state historic or heritage sites or Native American religious sites proximate to the site?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Are there important federal, state or local natural resources, including waterways, wildlife refuges, wetlands, or critical habitats of endangered or threatened species proximate to the site? (See Note 3)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Are there floodplains proximate to the site? (See Note 4)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
12. Are there any institutional controls currently applicable to the site?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
13. Describe on attachment the proximity to real property currently used for residential use, and to urban, commercial, industrial, agricultural, and recreational areas. (SEE ATTACHMENT K)			
14. Describe on attachment the potential vulnerability of groundwater to contamination that might migrate from the site, including proximity to wellhead protection and groundwater recharge areas. (SEE ATTACHMENT L)			
15. Describe on attachment the geography and geology of the site. (SEE ATTACHMENT M)			
(Note: the 16 th criteria relates to comments from the public, which would not be received at the time of application)			

Statement of Certification

(By applicant who is an individual)

I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law.

Date: _____ Signature: _____ Print Name: _____

(By an applicant other than an individual) (See attached Statement of Certification)

I certify that I am SR. VP (title) of TRC Companies, Inc.; that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.

Date: 5/23/07 Signature: [Signature] Print Name: MICHAEL C. SALMON

SUBMITTAL INFORMATION:

Four (4) complete copies, one with original signatures, are required.

- Three (3) of the copies, one with original signatures, must be sent to:
Chief, Site Control Section
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, NY 12233-7020

- One (1) copy must be sent to the DEC regional contact in the regional office covering the county in which the site is located. Please check our website for the address of our regional offices: <http://www.dec.state.ny.us/website/der/index.html>

FOR DEPARTMENT USE ONLY

BCP SITE NO: _____ BCP SITE T&A CODE: _____ PROJECT MANAGER: _____

Brownfield Cleanup Program (BCP) Application

Notes

Note 1: Certain potential uses of the property are consistent with applicable zoning requirements. Furthermore, the Agreement of Sale between Con Edison and the Developer, East River Realty Company, LLC, requires the Developer to seek zoning changes to achieve an FAR of 12, which are consistent with land use patterns in the area.

Note 2: Applicant does not believe that the project will result in a disproportionate adverse environmental impact on the community. For a full discussion of the potential environmental impacts of the project, please see the recently completed Final Generic Environmental Impact Statement (ENB February 04, 2004).

Note 3: The East River is proximate to the Site.

Note 4: The Kips Bay Fuel Terminal Site is within a floodplain.

Consolidated Edison Company of New York, Inc.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION
 ECL ARTICLE 27 / TITLE 14

10/9/03

Applicant Information			
NAME Consolidated Edison Company of New York, Inc.			
ADDRESS 4 Irving Place			
CITY/TOWN New York, NY		ZIP CODE 10003	
PHONE (212) 460-4600	FAX	E-MAIL	
NAME OF APPLICANT'S REPRESENTATIVE Robert P. Stelben			
ADDRESS 4 Irving Place			
CITY/TOWN New York, NY		ZIP CODE 10003	
PHONE (212) 460-2786	FAX (212) 260-5713	E-MAIL stelbenr@coned.com	
THE APPLICANT MUST CERTIFY THAT IT IS EITHER A PARTICIPANT OR VOLUNTEER IN ACCORDANCE WITH ECL § 27-1405 (1) BY CHECKING ONE OF THE BOXES BELOW:			
<input checked="" type="checkbox"/> PARTICIPANT An applicant who either 1) was the owner of the site at the time of the disposal of hazardous waste or discharge of petroleum or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.		<input type="checkbox"/> VOLUNTEER An applicant other than a participant, including an applicant whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.	
NOTE: By checking this box, the applicant certifies that he/she has exercised appropriate care with respect to the hazardous waste found at the facility by taking reasonable steps to: i) stop any continuing discharge; ii) prevent any threatened future release; and iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous waste.			
Applicant Relationship to Property (check one): <input type="checkbox"/> Previous Owner <input checked="" type="checkbox"/> Current Owner <input type="checkbox"/> Potential /Future Purchaser <input type="checkbox"/> Other			
Current Owner/Operator Information			
OWNER'S NAME (if different from applicant) (Same as above)			
ADDRESS (Same as above)			
CITY/TOWN (Same as above)		ZIP CODE (Same as above)	
PHONE (Same as above)	FAX (Same as above)	E-MAIL (Same as above)	
OPERATOR'S NAME (if different from applicant) Remediation Contractor under the VCO: TRC Companies, Inc.			
ADDRESS 1200 Wall Street West, 2 nd Floor			
CITY/TOWN Lyndhurst, NJ		ZIP CODE 07071	
PHONE (201) 933-5541	FAX (201) 933-5601	E-MAIL emalley@trcsolutions.com	

Site Information

SITE NAME Kips Bay Fuel Terminal
 SITE ADDRESS 616 First Avenue CITY/TOWN New York ZIP CODE 10016
 COUNTY New York
 LATITUDE (SEE ATTACHMENT A) SITE SIZE (ACRES) (SEE ATTACHMENT D)
 LONGITUDE (SEE ATTACHMENT A)

PLEASE ATTACH A COUNTY TAX MAP WITH IDENTIFIER NUMBERS, ALONG WITH ANY FIGURES NEEDED TO SHOW THE LOCATION AND BOUNDARIES OF THE SITE. ALSO INCLUDE A USGS 7.5 MINUTE QUAD MAP IN WHICH THE SITE IS LOCATED.

1. DO THE SITE BOUNDARIES CORRESPOND TO TAX MAP METES AND BOUNDS? (SEE ATTACHMENTS C-F)
 IF NO, PLEASE ATTACH A METES AND BOUNDS DESCRIPTION OF THE SITE.
2. IS THE SITE PART OF A DESIGNATED BROWNFIELD OPPORTUNITY AREA PURSUANT TO GML970-R? IF YES, IDENTIFY AREA (NAME) _____
3. IS THE SITE PART OF A DESIGNATED EN-Zone PURSUANT TO TL § 21(b)(6).
 IF YES, IDENTIFY AREA (NAME) _____

☐ YES ☒ NO☐ YES ☒ NO☐ YES ☒ NO**Applicant Eligibility Information (Please refer to ECL § 27-1407)**

1. ARE ANY ENFORCEMENT ACTIONS PENDING AGAINST THE APPLICANT REGARDING THIS SITE?
2. IS THE APPLICANT SUBJECT TO AN OUTSTANDING CLAIM BY THE SPILL FUND FOR THIS SITE?
3. HAS THE APPLICANT VIOLATED ANY PROVISION OF ECL ARTICLE 27? (SEE NOTE 5)
4. HAS THE APPLICANT BEEN PREVIOUSLY DENIED ENTRY TO THE BCP?
5. HAS THE APPLICANT COMMITTED A NEGLIGENT OR INTENTIONALLY TORTIOUS ACT REGARDING HAZARDOUS WASTE OR PETROLEUM?
6. HAS THE APPLICANT BEEN CONVICTED OF A CRIMINAL OFFENSE THAT INVOLVES A VIOLENT FELONY, FRAUD, BRIBERY, PERJURY, THEFT, OR OFFENSE AGAINST PUBLIC ADMINISTRATION? (SEE NOTE 6)
7. HAS THE APPLICANT KNOWINGLY FALSIFIED STATEMENTS OR CONCEALED MATERIAL FACTS IN A MATTER RELATED TO THE DEPARTMENT?
8. HAS THE APPLICANT, BASED ON THE PROVISIONS OF ECL ARTICLE 27-1407 (OR A SIMILAR PROVISION OF FEDERAL OR STATE LAW), COMMITTED AN ACT OR FAILED TO ACT, AND SUCH ACT OR FAILURE TO ACT COULD BE THE BASIS FOR DENIAL OF A BCP APPLICATION?

☐ YES ☒ NO☐ YES ☒ NO☒ YES ☐ NO☐ YES ☒ NO☐ YES ☒ NO☒ YES ☐ NO☐ YES ☒ NO☐ YES ☒ NO**Site Eligibility Information (Please refer to ECL § 27-1405)**

1. DOES THE SITE MEET THE DEFINITION OF A BROWNFIELD SITE (REAL PROPERTY, THE REDEVELOPMENT OR REUSE OF WHICH MAY BE COMPLICATED BY THE PRESENCE OR POTENTIAL PRESENCE OF A HAZARDOUS WASTE, PETROLEUM, POLLUTANT, OR CONTAMINANT)?
2. IS THE SITE LISTED ON THE NATIONAL PRIORITIES LIST?
3. IS THE SITE LISTED ON THE NYS REGISTRY OF INACTIVE HAZARDOUS WASTE DISPOSAL SITES?
 IF YES, PLEASE PROVIDE: SITE # _____ CLASS # _____
4. IS THE SITE SUBJECT TO A PERMIT UNDER ECL ARTICLE 27, TITLE 9, OTHER THAN AN INTERIM STATUS FACILITY?
5. IS THE SITE SUBJECT TO A CLEANUP ORDER UNDER NAVIGATION LAW ARTICLE 12 OR ECL ARTICLE 17 TITLE 10?
6. IS THE SITE SUBJECT TO A STATE OR FEDERAL ENFORCEMENT ACTION RELATED TO HAZARDOUS WASTE OR PETROLEUM?

☒ YES ☐ NO☐ YES ☒ NO☐ YES ☒ NO☐ YES ☒ NO☐ YES ☒ NO☐ YES ☒ NO**Project Description**

PLEASE ATTACH A DESCRIPTION OF THE PROJECT WHICH INCLUDES THE FOLLOWING COMPONENTS: (SEE ATTACHMENT B)

- PURPOSE AND SCOPE OF THE PROJECT
- ESTIMATED PROJECT SCHEDULE

Site's Environmental History

TO THE EXTENT THAT EXISTING INFORMATION/STUDIES/REPORTS ARE AVAILABLE TO THE APPLICANT, PLEASE ATTACH THE FOLLOWING:

1. ENVIRONMENTAL DATA (SEE ATTACHMENTS G AND H)

A PHASE I ENVIRONMENTAL SITE ASSESSMENT REPORT PREPARED IN ACCORDANCE WITH ASTM E 1527 (American Society for Testing and Materials: Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process), AND ALL ENVIRONMENTAL REPORTS RELATED TO CONTAMINANTS ON OR EMANATING FROM THE SITE.
IF A FINAL INVESTIGATION REPORT IS INCLUDED, INDICATE WHETHER IT MEETS THE REQUIREMENTS OF ECL ARTICLE 27-1415(2):

☒ YES ☐ NO

2. OWNERS (SEE ATTACHMENT H)

A LIST OF PREVIOUS OWNERS WITH NAMES, LAST KNOWN ADDRESSES AND TELEPHONE NUMBERS (DESCRIBE APPLICANT'S RELATIONSHIP, IF ANY, TO EACH PREVIOUS OWNER LISTED. IF NO RELATIONSHIP, PUT "NONE").

3. OPERATORS (SEE ATTACHMENT H)

A LIST OF PREVIOUS OPERATORS WITH NAMES, LAST KNOWN ADDRESSES AND TELEPHONE NUMBER (DESCRIBE APPLICANT'S RELATIONSHIP, IF ANY, TO EACH PREVIOUS OPERATOR LISTED. IF NO RELATIONSHIP, PUT "NONE").

Contact List Information (SEE ATTACHMENT I)

PLEASE ATTACH, AT A MINIMUM, THE NAMES AND ADDRESSES OF THE FOLLOWING:

1. THE CHIEF EXECUTIVE OFFICER AND ZONING BOARD CHAIRPERSON OF EACH COUNTY, CITY, TOWN AND VILLAGE IN WHICH THE SITE IS LOCATED.
2. RESIDENTS, OWNERS, AND OCCUPANTS OF THE SITE AND PROPERTIES ADJACENT TO THE SITE.
3. LOCAL NEWS MEDIA FROM WHICH THE COMMUNITY TYPICALLY OBTAINS INFORMATION.
4. THE PUBLIC WATER SUPPLIER WHICH SERVICES THE AREA IN WHICH THE SITE IS LOCATED.
5. ANY PERSON WHO HAS REQUESTED TO BE PLACED ON THE SITE CONTACT LIST.
6. THE ADMINISTRATOR OF ANY SCHOOL OR DAY CARE FACILITY LOCATED ON OR NEAR THE SITE.
7. THE LOCATION OF A DOCUMENT REPOSITORY FOR THE PROJECT (E.G., LOCAL LIBRARY)

Contaminant Information (SEE ATTACHMENT J)

INDICATE KNOWN OR SUSPECTED CONTAMINANTS AND THE MEDIA WHICH ARE KNOWN OR SUSPECTED TO HAVE BEEN AFFECTED:

Contaminant Category	Soil	Groundwater	Surface Water	Sediment	Soil Gas
Petroleum					
Chlorinated Solvents					
Other VOCs					
SVOCs					
Metals					
Pesticides					
PCBs					
Other*					

*Please describe: _____

Land Use Factors (Please refer to ECL § 27-1415(3))

Current Use: ☐ Residential ☐ Commercial ☒ Industrial ☐ Other _____

Future Use: ☒ Residential ☒ Commercial ☐ Industrial ☐ Other _____

Please check the appropriate boxes and provide an explanation as an attachment if appropriate.

	Yes	No	Unknown
1. Do current historical and/or recent development patterns support the proposed use?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Is the proposed use consistent with applicable zoning laws/maps? (See Note 1)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	Yes	No	Unknown
3. Is the proposed use consistent with applicable brownfield opportunity area designations? (See GML 970-r)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Is the proposed use consistent with applicable comprehensive community master plans, local waterfront revitalization plans, other adopted land use plans?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Are there any Environmental Justice Concerns? (See §27-1415(3)(p)). (See Note 2)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Are there any federal or State land use designations relating to this site?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Do the population growth patterns and projections support the proposed use?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Is the site accessible to existing infrastructure?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9. Are there important cultural resources, including federal or state historic or heritage sites or Native American religious sites proximate to the site?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Are there important federal, state or local natural resources, including waterways, wildlife refuges, wetlands, or critical habitats of endangered or threatened species proximate to the site? (See Note 3)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Are there floodplains proximate to the site? (See Note 4)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
12. Are there any institutional controls currently applicable to the site?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
13. Describe on attachment the proximity to real property currently used for residential use, and to urban, commercial, industrial, agricultural, and recreational areas. (SEE ATTACHMENT K)			
14. Describe on attachment the potential vulnerability of groundwater to contamination that might migrate from the site, including proximity to wellhead protection and groundwater recharge areas. (SEE ATTACHMENT L)			
15. Describe on attachment the geography and geology of the site. (SEE ATTACHMENT M)			
(Note: the 16th criteria relates to comments from the public, which would not be received at the time of application)			

Statement of Certification


(By applicant who is an individual)

I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law.

Date: _____ Signature: _____ Print Name: _____

(By an applicant other than an individual)

I certify that I am Vice President (title) of Consolidated Edison Company of New York, Inc. (entity); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.

Date: 5/27/04 Signature:  Print Name: Robert P. Stelben

SUBMITTAL INFORMATION:

Four (4) complete copies, one with original signatures, are required.

- Three (3) of the copies, one with original signatures, must be sent to:
Chief, Site Control Section
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, NY 12233-7020

- One (1) copy must be sent to the DEC regional contact in the regional office covering the county in which the site is located. Please check our website for the address of our regional offices: <http://www.dec.state.ny.us/website/der/index.html>

FOR DEPARTMENT USE ONLY

BCP SITE NO: _____ BCP SITE T&A CODE: _____ PROJECT MANAGER: _____

Brownfield Cleanup Program (BCP) Application

Notes

Note 1: Certain potential uses of the property are consistent with applicable zoning requirements. Furthermore, the Agreement of Sale between Con Edison and the Developer, East River Realty Company, LLC, requires the Developer to seek zoning changes to achieve an FAR of 12, which are consistent with land use patterns in the area.

Note 2: Applicant does not believe that the project will result in a disproportionate adverse environmental impact on the community. For a full discussion of the potential environmental impacts of the project, please see the recently completed Final Generic Environmental Impact Statement (ENB February 04, 2004).

Note 3: The East River is proximate to the Site.

Note 4: The Kips Bay Fuel Terminal Site is within a floodplain.

Note 5: Con Edison has in the past been charged by NYSDEC with violations of Article 27 of the ECL. However, these violations have been resolved or are being resolved to NYSDEC's satisfaction. Further, NYSDEC has not relied on these violations as a basis for denying Con Edison permits under Article 27 of the ECL or any other provision of the ECL.

Note 6: In 1995, Con Edison pleaded guilty in 1995 to four counts involving the failure to report the release of asbestos from an August 1989 steam explosion in the Gramercy Park section of Manhattan, making false statements in connection therewith, and conspiracy to defraud the United States. Con Edison paid the fine and completed the probation to which it was sentenced by the United States District Court for the Southern District of New York. Con Edison has disclosed this conviction in its past application to NYSDEC for Waste Transporter Permits under Article 27 of the ECL and NYSDEC has not relied on these violations as a basis for denying Con Edison such permits.

Attachment A

**Site Address
and
VCP Number**

ATTACHMENT A

SITE ADDRESS AND VCP NUMBER

KIPS BAY FUEL TERMINAL SITE

I. Site Name and Location -- Voluntary Cleanup Program Index No. D2-0001-01-03

1. Kips Bay Fuel Terminal
616 First Avenue
Manhattan, New York County, New York 10016
Block 967, Lot 1
Latitude N40° 44.628' Longitude W73° 58.087'
VCP Number: V-00-430-2

Attachment B

Project Description

ATTACHMENT B

PROJECT DESCRIPTION

1. Project Purpose and Scope

The purpose of the project is to transfer from the Voluntary Cleanup Program to the Brownfield Cleanup Program in order to complete a remedial scope of work at the site. The scope of work for the site is specified in the referenced NYSDEC-approved Remediation Work Plan for the Kips Bay Fuel Terminal Site located at 616 First Avenue.

The objective of the work is to ready the Site for unrestricted development for residential and commercial use to a depth which is the higher of: the top of competent rock, the mean high water table, or a depth of 16 feet below grade ("Development Depth"). At and above that depth, site conditions will be remediated such that no deed restrictions, institutional or engineering controls or further consents, approvals or authorizations will be required by NYSDEC.

It is the further objective that, following completion of the site remediation activities and subject to any ground water monitoring that may be required, the site will be in a condition to be improved to the Development Depth, including the installation of piles to the top of bedrock or caissons and dewatering as necessary, without the need for any special worker health and safety precautions or equipment during construction activities conducted above the Development Depth.

2. Estimated Project Schedule

The estimated project schedule is provided in the above-mentioned NYSDEC-approved Remediation Work Plan for the site, and in the monthly updates provided by TRC to NYSDEC.

Attachment C

(Site Information)

Site Survey

Attachment D

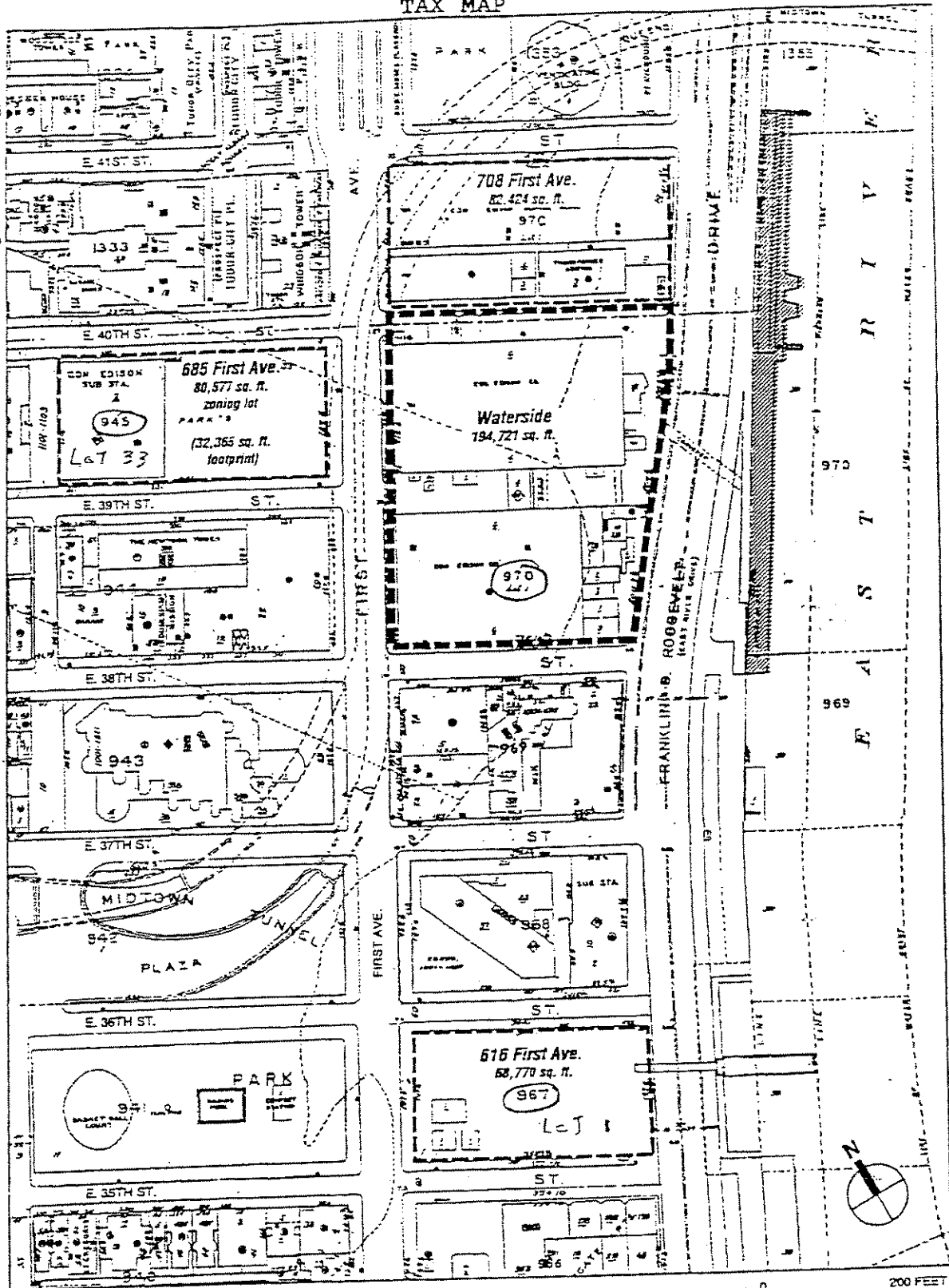
(Site Information)

Tax Map

ATTACHMENT D

TAX MAP

Source: Allee King Rosen & Fleming, Inc. 3-02



- 2007 Disposition Parcel Boundary
- 2011 Disposition Parcel Boundary
- Project Related Esplanade

Site Locations
Figure S-2

Attachment E

(Site Information)

Metes and Bounds

ATTACHMENT E

616 FIRST AVENUE

PROPERTY DESCRIPTION

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, County, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northerly line of East 35th Street with the easterly line of First Avenue;

RUNNING THENCE northerly, along the easterly line of First Avenue, 197'-6" to the corner formed by the intersection of the southerly line of East 36th Street with the easterly line of First Avenue;

THENCE easterly, along the southerly line of East 36th Street, 344'-1" to the corner formed by the intersection of the southerly line of East 36th Street with the westerly line of Franklin D. Roosevelt Drive;

THENCE southerly, along the westerly line of Franklin D. Roosevelt Drive, 197'-8" to the corner formed by the intersection of the northerly line of East 35th Street with the westerly line of Franklin D. Roosevelt Drive;

THENCE westerly, along the northerly line of East 35th Street, 352'-3 7/8 " to the point or place of BEGINNING.

Attachment F **(Site Information)**

USGS 7.5 Minute **Quad Maps**

USGS QUAD MAP

Attachment G

Voluntary Cleanup Program Agreement

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

VOLUNTARY CLEANUP ORDER /INDEX NUMBER: D2-0001-01-03

In the Matter of the Implementation of a Remedial Response Program for:

TRC East Side Properties (Four Sites), N.Y. County (Manhattan), City of New York

by:

TRC Companies, Inc. (RESPONDENT TRC)

and,

FSM East River Associates LLC (RESPONDENT FSM)

Site Numbers V-00429-2
V-00430-2
V-00431-2
V-00432-2
EDMS 25308.v3

WHEREAS, the Department is responsible for enforcement of the ECL and the NL and such laws provide the Department authority to enter into this Order;

WHEREAS, the Department has established a Voluntary Cleanup Program to address the environmental, legal and financial barriers that hinder the redevelopment and reuse of contaminated properties;

WHEREAS, Respondent TRC represents, and the Department relied upon such representations in entering into this Order, that Respondent TRC's involvement with the sites is limited to the following: Respondent TRC has or expects to take a possessory interest in the four related Sites subject to this Order from the current owner for the purpose of conducting only activities pursuant to the work plans or in preparation for or association with those; and, Respondent TRC will not undertake any redevelopment on the Sites and will be considered a responsible party as an innocent operator with respect to existing contamination upon taking a possessory interest in a site;

WHEREAS, Respondent FSM represents that it is expected to become the fee owner of the Sites referenced herein contingent upon the occurrence of certain future events;

WHEREAS, Respondent TRC represents, and the Department relied upon such representations in entering into this Order, that (A) portions of the Sites are subject to obligations imposed under the following Administrative Orders on Consent between the current owner of the Sites and the Department: (i) NYSDEC Index No. R2-1023-88-06 et seq., dated November 4, 1994 and (ii) NYSDEC Index No. D2-0003-96-12 et seq., dated October 23, 1997 (the "Existing

Consent Orders”) and (B) Respondent TRC will perform the outstanding investigation, remedial and reporting obligations imposed under the Existing Consent Orders with regard to the Sites as part of the work under this Order. Nothing contained herein constitutes a release for the named Respondent in the above referenced Existing Consent Orders from any obligations incurred pursuant to those Orders;

WHEREAS, the parties are entering into this Order in order to set forth a process through which the Department will approve and the Volunteer will implement activities designed to address in whole or in part environmental contamination at the Site; and,

WHEREAS, the Department has determined that it is in the public interest to enter into this Order as a means to address environmental issues at the sites with private funds while ensuring the protection of human health and the environment;

NOW, THEREFORE, IN CONSIDERATION OF AND IN EXCHANGE FOR THE MUTUAL COVENANTS AND PROMISES, THE PARTIES AGREE TO THE FOLLOWING AND IT IS SO ORDERED:

I. Site Specific Definitions

For purposes of this Order, the terms set forth in the Glossary attached to, and made a part of, this Order shall have the meanings ascribed to them in that Glossary. In addition, for purposes of this Order, the following terms shall have the following meanings:

A. “Contemplated Use”: Unrestricted uses for each of the Sites.

B. “Existing Contamination”: Existing contamination is described as follows for each Site subject to this Order:

1. Parking Lot, 685 First Avenue, (V-00429-2); soil and groundwater contaminants including, but not limited to, lead, petroleum, gasoline and associated breakdown products associated with the operation of a former underground storage tank (“UST”) and fleet fueling, including separate phase hydrocarbons (“SPH”) and benzene, toluene, ethylbenzene and xylene (“BTEX”), as set forth in,

- “Phase I Environmental Site Assessment, 40th Street and First Avenue Property,” Foster Wheeler, September 1998;

- “Underground Storage Tank Closure Report, East 40th Street,” Clean Venture, Inc., December 1998;

- “Investigation Report 39th Street Parking Lot, Roy F. Weston, Inc.”, June 1999;